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4 UNITED STATES DISTRICT COURT  
5 EASTERN DISTRICT OF WASHINGTON  
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8 DANA REUEL KLEIN, II,

9 Plaintiff,

10 vs.

11 DEPARTMENT OF CORRECTIONS, et al.,

12 Defendants.  
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NO. CV-10-152-JLQ

**ORDER DENYING MOTION FOR  
REMAND AND MOTION TO  
STRIKE**

14 **BEFORE THE COURT** are Plaintiff's Motion for Remand (**Ct. Rec. 7**) and  
15 Motion for Order Striking Defendants' Motion to Dismiss Hearing; and Stay Proceedings  
16 Pending Discovery Procedures (**Ct. Rec. 22**).

17 Plaintiff commenced this action in Spokane County Superior Court. The case was  
18 removed to federal court on May 18, 2010. Ct. Rec. 1. Defendants petitioned for  
19 removal pursuant to 28 U.S.C. § 1331 on the grounds that this case presents a federal  
20 question. A suit filed in state court may be removed to federal court if the federal court  
21 would have had original jurisdiction over the action. 28 U.S.C. § 1441(a). However, a  
22 removed action must be remanded to state court if the federal court lacks subject matter  
23 jurisdiction. 28 U.S.C. § 1447(c). The burden of demonstrating jurisdiction resides with  
24 the party seeking removal.

25 Under 28 U.S.C. § 1331, this Court has original jurisdiction over civil actions  
26 “arising under” federal law. Removal based on § 1331 is governed by the “well-pleaded  
27 complaint” rule. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 2429,  
28 96 L.Ed.2d 318 (1987). Under the rule, “federal jurisdiction exists only when a federal

1 question is presented on the face of plaintiff's properly pleaded complaint.” *Id.* at 392,  
2 107 S.Ct. at 2429, 96 L.Ed.2d 318. If the complaint does not specify whether a claim is  
3 based on federal or state law, it is a claim “arising under” federal law only if it is “clear”  
4 that it raises a federal question. *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir.1996).  
5 The plaintiff is generally the “master of the claim.” *Caterpillar*, 482 U.S. at 392, 107  
6 S.Ct. at 2429, 96 L.Ed.2d 318. If a plaintiff can maintain his claim on both state and  
7 federal grounds, he may ignore the federal question and assert only a state law claim and  
8 thereby defeat removal. *Hunter v. United Van Lines*, 746 F.2d 635, 641 (9th Cir.1984). A  
9 narrow exception to this general principle exists where a plaintiff uses “artful pleading”  
10 to disguise a federal claim as a state claim. *Sullivan v. First Affiliated Sec., Inc.*, 813 F.2d  
11 1368, 1372 (9th Cir.1987). However, the “artful pleading” doctrine is invoked “only in  
12 exceptional circumstances as it raises difficult issues of state and federal relationships  
13 and often yields unsatisfactory results.” *Salveson v. Western States Bankcard*  
14 *Association*, 731 F.2d 1423, 1427 (9th Cir. 1984).

15 Plaintiff's complaint challenges the Airway Heights Corrections Center program  
16 called "Right Living," ("RL") which he contends is a religious-based spiritual program.  
17 Plaintiff asserts he was forced to participate in the program by being forced to wear the  
18 "RL society medallion" which identified him as a member of the program. Plaintiff  
19 requests the court to declare the program unconstitutional under the state and United  
20 States constitutions and in violation of the Corrections Reform Act, RCW 72.09.135.

21 Defendants contend that the removal was proper because Plaintiff's Complaint  
22 raises claims under federal constitutional law and the Religious Freedom Restoration  
23 Act, 42 U.S.C. § 2000bb. Defendants' removal was understandable given the nature of  
24 the claims, the numerous references to alleged violations of the 1st and 8th amendments  
25 to the United States Constitution, as well as ambiguous language referring to the  
26 "Religious Freedoms Act." Plaintiff now represents to the court that although the U.S.  
27 Constitution is mentioned, he did not intend to seek relief under any federal statute and  
28 that the U.S Constitution is raised only as "secondary authority" in the event there is a

1 conflict. Plaintiff argues that Defendants have removed the case in bad faith for the  
2 purpose of delay, and in order to rely upon the "strict standards of exhaustion under the  
3 Prison Litigation Reform Act..." Ct. Rec. 8 at 2.

4 Plaintiff does not explicitly challenge federal jurisdiction. His assertion that he has  
5 not brought a federal claim is contradicted by his concession that he asserts federal  
6 constitutional claims as an alternative. Plaintiff's Complaint plainly states that  
7 Defendants violated his rights under the 1st and 8th Amendments to the U.S.  
8 Constitution. As such, the court finds that this court has jurisdiction over the Complaint  
9 and the removal was therefore proper. The court will adjudicate Plaintiffs' federal  
10 claims and thereafter decide whether to exercise supplementary jurisdiction over the  
11 state law claims, or remand them to state court. The court notes that the Motion to  
12 Dismiss filed by Defendants seeks dismissal of both the federal and state law claims for  
13 failure to exhaust his administrative remedies prior to filing suit.

14 Plaintiff's Motion For Remand (Ct. Rec. 7) and Motion for Order Striking  
15 Defendants' Motion to Dismiss Hearing (Ct. Rec. 22) are **DENIED**. Plaintiff shall file  
16 any response to the Defendants' Motion to Dismiss on or before **September 6, 2010**.  
17 Any reply shall be filed on or before **September 16, 2010**. Defendants' Motion to  
18 Dismiss (**Ct. Rec. 17**) shall be set on the court's calendar for hearing without oral  
19 argument on **September 17, 2010**.

20 The Clerk is hereby directed to enter this Order and furnish copies to counsel and  
21 Plaintiff.

22 **DATED** this 16th day of August, 2010.

23 s/ Justin L. Quackenbush  
24 JUSTIN L. QUACKENBUSH  
25 SENIOR UNITED STATES DISTRICT JUDGE  
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